

1 THE HON. J. RICHARD CREATURA
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9
10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT TACOMA

13 BRENTA S. CORBELLO,

14 Plaintiff,

15 v.

16 DION MOORE and JANE DOE MOORE,
17 dba LIGHTHOUSE FINANCIAL GROUP;
18 DAVID E. SCHATZ and JANE DOE
19 SCHATZ, husband and wife, dba D.
20 SCHATZ CONSTRUCTION, INC.; JOHN
21 A. COCHRAN and SANDRA COCHRAN,
husband and wife; and CBIC,

Defendants,

v.

CNA, dba CONTINENTAL CASUALTY
COMPANY,

Garnishee Defendant.

No.: 3:10-cv-05357-JRC

ANSWER TO GARNISHMENT AND
AFFIRMATIVE DEFENSES

22 **ANSWER AND AFFIRMATIVE DEFENSES**

23 Defendant-Garnishee Continental Casualty Company (“Continental”) files this
24 Answer and Affirmative Defenses to the Writ of Garnishment filed by Plaintiff-Garnishor
25 Brenda S. Corbello.

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1 1. Continental generally denies the allegations of the garnishment action and
 2 denies that Corbello is entitled to the relief sought, or to any relief whatever, from
 3 Continental.

4 2. On the date the Writ of Garnishment was issued by the Superior Court for
 5 Clark County, Washington, (i) John A. Cochran did not maintain an account with
 6 Continental; (ii) Continental did not have possession of or control over any funds, personal
 7 property, or effects of Mr. Cochran; and (iii) Continental did not owe any money to Mr.
 8 Cochran.

9 3. Continental issued Lawyers' Professional Liability Policy No. LAW-
 10 287275143, to The Cochran Law Firm, LLC for the claims made and reported policy period
 11 of July 23, 2008 to July 23, 2009 (the "Policy"). Mr. Cochran was an insured under the
 12 Policy.

13 4. Ms. Corbello filed the garnishment action to satisfy from the Policy's proceeds
 14 a judgment she obtained against Mr. Cochran and his co-defendants in the lawsuit captioned
 15 *Brenda S. Corbello v. Dion Moore, et al.*, Case No. 08 2 07216 2 (Clark Cty., WA Super.
 16 Ct.) (the "Underlying Action"). The Policy does not provide coverage for the Underlying
 17 Action for the reasons set forth in Continental's Affirmative Defenses.

AFFIRMATIVE DEFENSES

19 1. The complaint in the Garnishment Action fails to state a claim upon which
 20 relief may be granted.

21 2. Coverage is not available under the Policy for the Underlying Action for the
 22 reasons set forth below.

23 "(a) Coverage for the Underlying Action is excluded by
 24 Policy Section IV.F, which precludes coverage for:
 25 any **claim** based on or arising out of an **Insured's** capacity as:

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1. a former, existing or prospective officer, director,
2 shareholder, partner or manager of a business enterprise
3 or charitable organization (if the above are not named in
the Declarations); or
4. a former, existing or prospective officer, director,
5 shareholder, partner, manager, or trustee of a fund or
trust which is a pension, welfare, profit-sharing, mutual
or investment fund or trust; or
6. a fiduciary under the Employee Retirement Income
7 Security Act of 1974 and its amendments or any
regulation or order issued pursuant thereto or any other
similar state or local law;

8 except that this exclusion shall not apply to a **claim** based on or
9 arising out of an **Insured's** capacity as a member, director or
10 officer of any professional legal association, its governing board
or any of its committees.

11 Policy, § IV.F.

12 (a) Coverage for the Underlying Action also is precluded by
13 the Policy's exclusion of coverage for:

14 any **claim** based on or arising out of **legal services** performed
15 for any existing or prospective partnership, organization,
16 corporation, company or other business enterprise (including the
ownership, maintenance or care of any property in connection
therewith), not named in the Declarations, if at the time of the
act or omission giving rise to such claim:

- 17 1. any **Insured** controlled, operated or managed or intended
18 to control, operate or manage such enterprise; or
- 19 2. any **Insured** was:
 - 20 a. a partner or employee of such enterprise, or
 - 21 b. more than a 10% shareholder or a sole proprietor
of such enterprise, or
- 22 3. **Insureds** cumulatively were more than a 10%
shareholder of such enterprise;

23 except that this exclusion shall not apply to any **claim** based on
24 or arising out of **legal services** to any professional legal
25 association, its governing board or any of its committees. As
26 used in this exclusion, the word "partner" shall be deemed to
include members of limited liability companies or limited
liability partnerships.

1 Policy, § IV.H.

2 (c) The Underlying Action indisputably arises out of legal
3 services that Cochran performed for Corbello Estates, of
4 which he was a member and 25% owner, and out of
5 Cochran's capacity as a former, existing or prospective
officer, director, shareholder, partner, manager, or trustee
of Corbello Estates. Accordingly, Sections IV.F and
IV.H preclude coverage for the Underlying Action."

6 3. Coverage for the Underlying Action is or may be barred in whole or in part by
7 laches, waiver or estoppel.

8 4. Coverage for the Underlying Action is or may be barred in whole or in part by
9 failure to comply with conditions precedent to coverage under the Policy.

10 5. Coverage for the Underlying Action is or may be barred to the extent plaintiffs
11 seek coverage for matters or amounts that are not insurable under law or for which insurance
12 coverage would violate public policy.

13 6. Coverage for the Underlying Action is or may be barred to the extent Corbello
14 seeks restitution and/or amounts paid (or to be paid) as disgorgement of monies to which the
15 recipient was not entitled.

16 7. Coverage for the Underlying Action is or may be barred to the extent Corbello
17 seeks coverage for any matter asserted against or any amount incurred by or on behalf of any
18 individual or entity that is not insured under the Policy.

19 8. Coverage for the Underlying Action is or may be barred to the extent Corbello
20 seeks recovery for conduct committed, attempted or allegedly committed or attempted by
21 any insured in an uninsured capacity.

22 9. Continental reserves the right to assert affirmatively any other matter that
23 constitutes an avoidance or defense under applicable rules.

24 WHEREFORE, for the reasons set forth above, Plaintiff Continental Casualty
25 Company respectfully requests that this Court:

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- (A) Dismiss the garnishment action with prejudice;
 - (B) Award Continental its costs incurred herein; and
 - (C) Award Continental all other relief to which it may be entitled.

DATED: May 28, 2010

BULLIVANT Houser Bailey PC

By /s/ Scott S. Anders

Scott S. Anders, WSBA #19732

E-Mail: scott.anders@bullivant.com

Attorneys for Continental Casualty Insurance
Company

12568293.1

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 28th day of May 2010, I caused to be served the foregoing
3 ANSWER TO GARNISHMENT AND AFFIRMATIVE DEFENSES on the following party
4 at the following address:

5 Mr. Odine H. Husemoen
6 Walstead Mertsching
7 Attorneys at Law
7 1700 Hudson Street
8 PO Box 1549
8 Longview, WA 98632-7934

9 by:



U.S. Postal Service, ordinary first class mail
U.S. Postal Service, certified or registered mail,
return receipt requested
hand delivery
other (specify) ECF

14 /s/ Scott S. Anders
15 Scott S. Anders